

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WEDGEWOOD HALL OWNERS, INC.,

Plaintiff,

NOTICE OF REMOVAL

-against-

ASPEN AMERICAN INSURANCE COMPANY,

Defendant.

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PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant ASPEN AMERICAN INSURANCE COMPANY (“Aspen”), by and through its undersigned counsel, Rivkin Radler LLP, hereby files this Notice of Removal of the above-captioned action (“Action”) to the United States District Court for the Eastern District of New York from the Supreme Court of the State of New York, Kings County, where the action is now pending under Index No. 516349/2020, and states as follows:

1. On or about September 2, 2020, Plaintiff, WEDGEWOOD HALL OWNERS, INC (“Plaintiff” or “Wedgewood”), commenced this Action in New York State Supreme Court, Kings County, by filing a Summons with Notice, and the Action is now pending in that court. Annexed hereto as Exhibit “A” is a copy of the Summons with Notice in this Action.

2. On September 8, 2020, Aspen was served with a copy of the Summons with Notice in this Action.

3. This Notice of Removal is being filed within thirty (30) days after Aspen received the Summons with Notice and, therefore, is timely filed pursuant to 28 U.S.C. §§ 1441, 1446(b).

4. Removal of this Action is proper because this is a civil action in which Plaintiff seeks declaratory and monetary relief against Aspen for damages in excess of \$75,000 and there is complete diversity under 28 U.S.C. § 1332 between Plaintiff and Aspen.

5. Venue is proper in this United States District Court pursuant to 28 U.S.C. § 1446(a) because this Action is pending in Kings County, which is within the Eastern District of New York.

6. Aspen will give written notice to Plaintiff (through counsel) of the filing of this Notice of Removal, as required by 28 U.S.C. § 1446(d).

7. Aspen will file a copy of this Notice of Removal and a Notice of Filing the Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of Kings, as required by 28 U.S.C. § 1446(d).

8. Aspen has thus satisfied the requirements for removal under 28 U.S.C. § 1446 and all applicable rules.

A. Nature of the Case

9. This Action is a civil action for insurance coverage and other relief in connection with a Kings County Supreme Court underlying action entitled *Dashawn Morris v. Wedgewood Hall Owners, Inc., et al.*, Index No. 502034/2018 (N.Y. Sup. Ct. Kings Co.) (“Underlying Action”) and filed on January 31, 2018. Annexed hereto as Exhibit “B” is a copy of the Summons and Complaint in the Underlying Action. Plaintiff seeks coverage under the commercial general liability coverage part of an insurance policy that Aspen issued to Plaintiff, as well as other relief.

10. In the Underlying Action, claimant Dashawn Morris (“Claimant”) seeks monetary damages from Plaintiff and others for alleged bodily injuries sustained on September 13, 2016 while he was performing work at premises that Plaintiff owned, operated, maintained, managed and/or controlled.

11. Plaintiff did not file an answer in the Underlying Action and, on or about October 17, 2019, Claimant obtained a default judgment against Plaintiff in the principal amount of

\$450,740, plus interest. Annexed hereto as Exhibit "C" is a copy of the Judgment that was entered in the Underlying Action.

12. Aspen's first notice of Claimant's accident, claim, the Underlying Action and the default judgment was not until October 28, 2019.

13. By letter dated November 21, 2019, Aspen disclaimed coverage to Plaintiff with respect to the accident, claim and Underlying Action based upon provisions in the insurance policy that Aspen issued to Plaintiff, including the provisions requiring timely notice.

B. The Diversity Of Citizenship And Amount In Controversy Requirements Are Satisfied

i. Diversity of Citizenship

14. Plaintiff is now, and at the time the action was commenced, a citizen of the State of New York with its principal place of business located at 2580 Ocean Parkway, Brooklyn, New York, in the County of Kings.

15. Defendant, Aspen is now, and at the time the action was commenced, a citizen of the State of Texas with its principal place of business located at 175 Capital Boulevard, Suite 300, Rocky Hill, Connecticut.

16. No change of citizenship of the parties has occurred since the commencement of this Action.

17. Accordingly, the diversity requirement of 28 U.S.C. § 1332(a)(1) is satisfied.

ii. Amount in Controversy

18. In this Action, Plaintiff seeks monetary relief against Aspen in the amount of "at least \$2,000,000.00", including indemnification for the judgment obtained by the Claimant in the Underlying Action in the amount of \$450,740, plus interest.

19. Accordingly, Plaintiff is seeking damages from Aspen in an amount exceeding \$75,000, and the amount in controversy requirement of 28 U.S.C. § 1332(a)(1) for removal is satisfied.

WHEREFORE, since all prerequisites for diversity jurisdiction are present, Aspen respectfully requests that this action proceed in the United States District Court for the Eastern District of New York as an action properly removed to it.

Dated: Uniondale, New York
October 8, 2020

RIVKIN RADLER LLP

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